within the parameters of stabilized base-year demand.[113] Such evidence of cross-elasticity of demand between the non-discounted domestic MTS basic schedule offerings and the services we have defined above as APPs is not restricted to the regulatory sphere. A recent news article, for example, reported that:

> AT&T . . . saw a huge shift among its own customers toward discount calling plans. Company executives say 53 percent of all minutes of consumer traffic on its network last year were discounted calls, a jump from 33 percent in 1993.[114]

The evidence of cross-elasticity of demand between basic schedule MTS and APPs argues in favor of a finding that these services should be classified within the same service category, much as AT&T's True promotions and basic schedule offerings co-exist at present within the three domestic MTS service categories. We thus tentatively conclude that domestic MTS self-selected promotions and OCPs, *i.e.*, APPs, are sufficiently substitutable with domestic MTS services to warrant their inclusion in a single domestic MTS service category. We seek comment on this tentative conclusion.

43. Service Category Bands. The establishment of a single domestic MTS service category would require modifications to the service category bands applicable to the existing residential service categories. The services currently within Basket 1 that would be merged into a single domestic MTS service category -- namely, time-of-day domestic MTS, ReachOut America, and current domestic MTS promotions -- are currently subject to both upward and downward banding limitations.[115] Under the downward banding limitation in the current price cap rules, a Basket 1 rate decrease proposed by AT&T that would result in an overall change in a service category rate that is greater than five (5) percent relative to the change in the price cap index (PCI) does not qualify for streamlined

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[113]*See, e.g.*, Letter from Charles L. Ward, AT&T to Acting Secretary, Federal Communications Commission, at 3 (April 20, 1994) (". . . the larger historic demand of domestic services [as compared to international services] provides greater price cap credit for rate reductions made in those services.")

[114]Edmund L. Andrews, *No-Holds-Barred Battle for Long-Distance Calls*, New York Times, January 21, 1995, at 48.

[115]*See* Section 61.47 of the Commission's Rules, 47 C.F.R. § 61.47 (adjustments to the service band index; pricing bands).

review.[116] Under the upward banding limitation in the current price cap rules, any Basket 1 rate increase proposed by AT&T that results in an overall change in a service category rate that is greater than five (5) percent relative to the change in the PCI, or in the case of the domestic evening MTS and domestic night/weekend MTS service categories, greater than four (4) percent relative to the change in the PCI, does not qualify for streamlined review.[117] Within-band filings are considered to be *prima facie* lawful, and petitioners seeking suspension of such filings are held to a high burden of proof.[118]

44. We tentatively conclude that a four-percent ceiling should be placed on the single domestic MTS service category band. In the *AT&T Price Cap Order*, the Commission imposed a similar four-percent upper limit on the domestic MTS evening and domestic MTS night/weekend service category bands because it found that these categories were "predominantly used by residential callers." The Commission expressed particular concern that there are "a significant number of customers residing in non-equal access, rural areas who have no alternative to turn to should AT&T raise its evening and night/weekend rates."[119] We seek comment whether this reasoning or other reasons for tighter band limits on the domestic MTS category retain their viability. In any event, because we believe that the single domestic MTS service category we propose in this Further Notice will be used predominantly by residential customers, we tentatively conclude that a four-percent upper limit is therefore appropriate. We seek comment on this tentative conclusion.

45. We further propose to modify the existing five-percent floor on Basket 1 services with respect to the proposed single domestic MTS service category. The lower band was created in the price caps scheme to deter AT&T predatory conduct. In the *AT&T Price Cap Order*, the Commission decided to establish a five-percent floor on price decreases within the Basket 1 service categories because it believed that the "threat of predatory pricing is one that is best addressed in a structural manner as part of price cap regulation."[120] The Commission acknowledged that rate decreases below the lower band limits are not evidence of predatory pricing: "such below-band reductions as are possible

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[116]*See AT&T Price Cap Order*, 4 FCC Rcd at 3056; 47 C.F.R. § 61.49(d).

[117]*See id.* at 3059-60.

[118]*See* Section 1.773 of the Commission's rules, 47 C.F.R. § 1.773.

[119]*See AT&T Price Cap Order*, 4 FCC Rcd at 3059-60.

[120]*See AT&T Price Cap Order*, 4 FCC Rcd at 3056.

within the limits of our price cap scheme are more likely to be competitive than predatory."[121] We believe that successful predation, defined as the ability to lower prices below a relevant measure of costs in order to drive competitors from the market, is an unlikely occurrence.[122] In the *AT&T Price Cap Order*, the Commission observed that "[p]redatory pricing, though often alleged, is generally uncommon, and proven cases are rare. We have, through the structure of AT&T's service baskets, created conditions under which predation should be as unlikely in the interexchange telecommunications market as it is in the economy generally."[123] We also tentatively conclude that the possibility of predation presents less of a concern in an environment where each of the largest three interexchange carriers offers some form of long distance promotional discount.[124] We therefore propose that prices for the single domestic MTS service category band be allowed to decrease by greater than five percent. We seek comment on whether a 15 percent lower limit on the domestic MTS service category band would be more appropriate while not significantly increasing the likelihood of predatory pricing.

46. New Services Issues. In proposing to establish a single domestic MTS service category including the services we have defined above as APPs, we also propose to modify our existing new services rules to clarify that these rules do not apply to APPs. Under our current system, the manner in which AT&T styles a new discounted offering determines whether the price cap new services rules apply to the service. Thus, a new offering classified as an optional calling plan is subject to new services treatment, while essentially

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[121]*Id.* at 3114.

[122]*See, e.g.*, *Brook Group Ltd. v. Brown & Williamson Tobacco Corp.*, 113 S. Ct. 2578, 2587-88 (1993).

[123]*AT&T Price Cap Order* at 3114.

[124]*See* John J. Keeler, *MCI and Sprint Unveil Deep Discounts, New Services in Fresh Fight With AT&T*, Wall Street Journal, January 6, 1995, at A3. In addition, a statement attributed to a Sprint spokeswoman in a recent trade press article regarding a new marketing campaign initiated by long-distance carrier LCI International, for example, indicates that:

> Sprint follows [the] lead of AT&T and MCI in determining and setting rates for [the] consumer market. [The spokeswoman said] "That's our competition and that's who we deal with."

See LCI Charges Big 3 Long Distance Companies Overcharge by $2 Billion Annually, Communications Daily, January 31, 1995, at 1-2 (quoting Sprint Consumer Services Group spokeswoman Juanita Teas).

the same offering styled as a promotion is not treated as a new service but, instead, as a rate change for an existing service. As explained below, this difference in labels has significant consequences for price index calculations without any sound basis for the differing results ensuing from these calculations. We propose to retain our new services rules for AT&T services that are "new" in all respects, *i.e.*, unlike existing services, but to create new rules to bring new APPs within price cap regulation.

47. As stated in the background section, *supra*, a new service is defined as any filing that expands ratepayers' range of service options within those services subject to price cap regulation.[125] New services may be introduced on 45 days' notice, provided AT&T can demonstrate that the new service will generate a net revenue increase within 24 months after incorporation of the new service into an annual price cap tariff or within 36 months after the effective date, whichever occurs first.[126] To develop the historical data needed to perform index calculations for new services, new services are included in price cap regulation in the first annual price cap tariff filing after completion of the base year in which the new service becomes effective.[127] AT&T does not receive price cap credit for a new service that offers a rate reduction, even after the service is introduced into a price cap basket, because the rate reduction occurred outside of price caps.

48. The current requirements that new services be filed on 45 days' notice, supported by a showing that they will result in a net revenue increase, can severely limit AT&T's ability to respond promptly to new developments in the increasingly competitive marketplace in which it offers its price cap services. We therefore tentatively conclude that we should not apply our new services rules to APPs. Instead, we propose to allow AT&T to file alternative pricing plans initially outside of price caps, as are new services, but on a streamlined basis, *i.e.*, on 14 days' notice, without cost support. As discussed more fully below, we propose to allow AT&T to receive immediate price cap credit for APPs upon the conclusion of a shortened 90-day initial period, as opposed to the current one-year base period for new services.

49. We are concerned that basing PCI, API, and SBI calculations for inclusion of new services into price caps on forecasted, as opposed to actual, data may result in overstated headroom, especially when such forecasts can extend over a period of one year or more. We have also observed that the use of extended forecasts may also allow AT&T

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[125]*See AT&T Price Cap Reconsideration Order*, 6 FCC Rcd at 666-67.

[126]*See id.*

[127]*See id.*; *see also* 47 C.F.R. §§ 61.42(g), 61.44(g), 61.46(b), 61.47(b).

to ratchet up forecasted demand by making repetitive filings several times a year. We tentatively conclude that we should avoid the use of demand forecasts that are not based on actual data in connection with the inclusion of APPs into price caps. We also tentatively conclude that AT&T should not be required to delay the inclusion of APPs into Basket 1 for up to 18 months. We believe that allowing AT&T to offer APPs on 14 days' notice and with a shortened 90-day base period will address effectively AT&T's interest in greater streamlining. At the same time, requiring the use of actual demand and cost data upon the conclusion of ninety-day base period should address our concerns regarding the possibility that AT&T may ratchet up its forecasted demand by means of repetitive filings of extended forecasts.

50. We believe that these modified procedures for the introduction of APPs will therefore effectively streamline and preserve the integrity of our price cap rules. We tentatively conclude that this approach would address many of AT&T's concerns about the inflexibility of applying our new services rules to discount service plans, while meeting our concerns about the use of forecasted data in making price caps calculations. We seek comment on these tentative conclusions. We also seek comment as to how the approach to price cap treatment for APPs outlined here should be applied to AT&T existing, on-going promotional offerings which fall within the APP definition we have proposed and are currently under price cap regulation, such as the "True" promotions.

51. We also propose to maintain our current new service rules as they apply to new AT&T price cap offerings that are not APPs. Because such services will presumably be primarily services that are not "like" already-provided services, these services are likely to present cost and demand issues beyond the narrow set of "headroom" issues we address in this Further Notice. We thus believe that we should continue to hold such new services outside of price caps until the first annual price cap tariff filing after completion of the base year in which the new service becomes effective in order to gather complete and comprehensive data on the costs, demand, and revenues associated with such new services before they are placed within a price cap basket and thus affect the demand and revenue factors for that basket.[128] Moreover, when we instituted price cap regulation for AT&T, we recognized that new services can raise complex issues, including discrimination and anticompetitive behavior, which require careful review.[129] Tariffs proposing new services were thus required to be filed on 45 days' notice, with supporting information and data to

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[128]*See* 47 C.F.R. § 61.44(g) (exogenous cost changes to PCI attributable to new services); 47 C.F.R. § 61.46(b) (adjustments to demand weighting used in API calculations); and § 61.47(b) (adjustments to demand weighting used in SBI calculations).

[129]*See AT&T Price Cap Order*, 4 FCC Rcd at 3122.

demonstrate compliance with the requirement that such new services increase net revenues for price cap services.[130] Because we believe that such complex issues may remain of potential great concern at present, AT&T should continue to file tariffs for new services other than APPs on 45 days' notice and to make the showing of increased net revenues for new services currently required under our rules, in order to minimize any risk of unreasonable discrimination, cross-subsidization or anticompetitive behavior.

52. We also seek specific comment on the proper price cap treatment of AT&T's recently introduced 500 service, which appears not to fall within our proposed definition of alternative pricing plans. AT&T filed this offering on 27 days' notice as a streamlined business service, arguing that such treatment was appropriate because the new service was primarily designed for and particularly useful to business customers.[131] In petitioning against the AT&T tariff introducing 500 service, MCI quoted Section 61.58(c)(5) of our Rules, which states, in relevant part: "Tariff filings involving the introduction of a new service within the scope of Section 61.42(g) . . . must be made on at least 45 days' notice."[132] MCI interpreted this rule to encompass all new services tariffs filed by AT&T, and contended that AT&T must adhere to this rule or obtain a waiver for its tariff to be lawful.[133] After the Common Carrier Bureau deferred AT&T's tariff to 45 days' notice and AT&T submitted cost data which it represented met the requirements of Section 61.49(g) of our rules, the service was permitted to take effect without an investigation.[134] The potential ambiguity in our Rules with regard to streamlined versus price cap treatment of new services is of concern to us. With particular relevance to 500 service, we now propose to change our rules to specify that to be subject to streamlined rather than price cap regulation, the projected demand for such new services can include only *de minimis* usage by AT&T's residential subscribers, (*i.e.*, less than five percent of overall projected demand within the net revenue test period set forth in Section 61.49(g)(1)). We seek comment on these tentative conclusions and proposals.

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[130]*Id.* at 3123-24; *see also id.* at 3127-28 (rejecting AT&T proposal that we apply streamlined tariff review to new services).

[131]*See* AT&T Communications Transmittal No.7698, 10 FCC Rcd 900 (1994) ("*Transmittal 7698 Order*").

[132]47 C.F.R. § 61.58(c)(5).

[133]MCI Petition To Reject Or, In The Alternative, To Suspend And Investigate, AT&T Communications Transmittal No. 7698 (filed Nov. 10, 1994).

[134]*Transmittal 7698 Order*, 10 FCC Rcd at 900-01.

53. We accordingly propose to change our new service rules to allow AT&T to file all new APPs on a streamlined basis, *i.e.*, on 14 days' notice, without cost data, provided that the APPS are scheduled to expire automatically no later than 90 days after the initial effective date. The APPs will be kept outside of price caps during this period; we will not allow AT&T price cap credit for these new APPs. On the last business day of the 90-day period, AT&T may extend the expiration date of the APP for 30 days in order to permit the conversion of the APP as a permanent offering under price caps. These revisions would allow AT&T to continue to provide the APP outside of price caps for the extended period. Within this thirty-day period, AT&T would be required to submit tariff revisions on not less than 14 days' notice. The new tariff pages would remove the expiration date and would be accompanied by supporting information required to include the service under price caps. If a longer period is required for review of the tariff filing by the Common Carrier Bureau, AT&T would be required to defer tariff revisions introducing the permanent offering for a period not to exceed 120 days. AT&T would also be permitted to extend the termination of the APP during this period. In this way, AT&T would be able to avoid any interruption in its offering of discounted rates, pending completion of the Bureau's review of the permanent offering.

54. We caution that we will not allow AT&T to evade the 90-day expiration period for new APPs held outside of price caps by making insubstantial changes to the rates, terms and conditions of such APPs and reintroducing them through such tariff revisions as "new" APPs. We will consider all relevant indicia in our tariff review process as to whether APPs are indeed new offerings, including branding, trademarks, AT&T's identification of APPs to consumers, and other marketing and marketplace factors.

55. The tariff revisions that propose to include the APP under price caps would be subject to the provisions of Section 61.49 of our Rules. These revisions would be supported by actual demand figures from the 90-day period that the initial APP filing was effective. The rates, terms and conditions of the APP to be subject to price caps may not differ in any material respect from the rates, terms and conditions of the APP as originally introduced outside of price caps. We would allow AT&T immediate index credit on the date that the tariff revisions placing the APP under price caps take effect, based on its representation of the annualized actual demand for the APP, as well as any exogenous cost changes that may relate to the APP.[135]

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[135]By "annualized" demand, we mean that AT&T would be able to apply demand figures gained from the initial 90-day period by adjusting this actual demand data to correspond to the base year demand used in calculating the API and SBIs. For example, data for the full 90 days

56. We also propose to require AT&T to file quarterly "true-up" reports, *i.e.*, quarterly updates of actual demand figures, during the initial year that the new APP is incorporated into price caps, in order to refine its calculations of the headroom created by the offering. We would allow AT&T to file rate changes to the new APP during the first year of price cap regulation by means of a tariff transmittal, giving 14 days' notice of such changes, but any change in price cap indices would have to filed on 45 days' notice and based on historical demand data such as AT&T would be required to file with the quarterly true-up report.

57. We thus propose changes to Sections 61.3, 61.43-.44, 61.46-.47, 61.49 and 61.58 of our Rules to permit streamlined treatment for new APPs. We believe that requiring AT&T to use historical demand, as required for other types of rate changes under our current price cap rules, will eliminate the creation of headroom based on demand projections for promotions. Any increases in the basic schedule rates, therefore, will be based on actual revenue balancing, not merely on forecasts of revenue stream, thus providing stability for basic schedule ratepayers and for AT&T. AT&T will also benefit from the increased flexibility to file "initially streamlined" APPs and to receive nearly immediate index credit for those APPs filed on a permanent basis after the initial 90-day period. The Common Carrier Bureau would also retain the ability to defer APP tariff filings, either upon the initial filing or upon the price cap filing after the initial 90-day period, if additional information or review is required, and to suspend or reject such filings based on applicable legal standards.

C. Limitations on Rate Increases for Basic MTS

58. As discussed above in the background section of this Further Notice, AT&T's creation of price cap "headroom" through discounted offerings has permitted it to increase it's basic schedule rates for domestic MTS. We ask here whether such basic schedule rate increases implicate our statutory and policy goals, pursued through price cap regulation, of just and reasonable rates, without unreasonable discrimination, and universal availability of such reasonably priced service. AT&T has asserted that its increases for basic schedule rates are reasonable. We seek comment on this matter generally and on the specific issues discussed below.

59. As a threshold matter, we seek comment on the significance of the AT&T basic rate schedule for domestic MTS relative to other rates offered for domestic MTS in

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would multiplied by a factor of 4.05 to calculate the "annual" headroom effect of the APPs' discounted rates.

the interexchange marketplace. We note, for example, that many of AT&T's discounted offerings, such as the True promotions, are framed in terms of percentage discounts off the basic rate schedule at various usage levels. We also seek comment on the relationship of AT&T's basic rate to the basic rates of its competitors.

60. Commenters should discuss whether, and, if so, how our public policy goals, such as the achievement of reasonably nondiscriminatory, cost-based rates or the promotion of universal service, should affect our regulatory treatment of Basket 1 domestic MTS. We address specific issues relating to discrimination and the cost basis for AT&T's rates below. We also seek comment as to whether universal service concerns are implicated in our regulation of AT&T's basic rates. Although "universal service" is most generally regarded as a goal pursued through the widespread availability of reasonably priced local telephone service, some have advocated that this goal should be expanded to include services made available through a more technologically advanced communications infrastructure. We recognize that Section 1 of the Communications Act, usually regarded as the locus of the universal service mandate, requires us to regulate so as "to make available, so far as possible, to all the people of the United States, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, ..."[136] We seek comment on what level of scrutiny this statutory mandate requires us to undertake with respect to the basic schedule offerings of the dominant interexchange carrier.

61. We also seek comment on whether the availability of local telephone service is affected by increases in AT&T's basic schedule rates for interstate MTS. We note, for example, that studies indicate that the majority of those without telephone service once were subscribers, but have been disconnected for nonpayment of toll charges.[137] We seek comment on the relationship, if any, of increased basic schedule service rates for domestic MTS with the disconnection of local telephone subscribers due to nonpayment of toll charges.

62. AT&T states that it typically does not recover the incremental costs of providing service to its "low-volume" basic schedule customers, while its price structure for its "high-volume" customers has normally exceeded the incremental costs of providing

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[136]47 U.S.C. § 151 (emphasis added).

[137]*See* Field Research Corp., *Affordability of Telephone Service, Vol. 1, Non-Customer Survey*, for GTE/Pacific Bell (Oct. 1993); *Chesapeake and Potomac Telephone Co. 's Submission of Telephone Penetration Studies*, Docket 850 (D.C. Pub. Service Comm'n., Oct. 1993).

residential long-distance service to them.[138] According to AT&T, the provision of mass-market discounts, such as the True promotions, to high-volume customers and increases in rates for low-volume customers are justified as a means of rebalancing prices with costs.[139] Commenters should discuss the validity of AT&T's arguments regarding cost recovery for serving "low-volume" customers of basic schedule offerings vis-a-vis cost recovery for serving "high-volume" customers of discounted offerings, and the degree to which "low-volume" customers experience periods of higher-volume usage which can offset the costs of providing low volume service in other periods. We also seek comment on the extent to which the Communications Act's protections against unreasonable discrimination are implicated by the cost issues we raise here, *i.e.*, if rate differences between AT&T's basic schedule services and its discounted offerings reflect a wider variation than corresponding cost differences, at what point do such rate variations become unreasonable?

63. We seek comment on the relative availability of AT&T discounted offerings as compared to domestic MTS offered at basic rates. If AT&T's discounted offerings are unavailable to a significant body of residential customers, then AT&T's increases in basic rates to these customers may extend well beyond any AT&T need to recover costs and may demonstrate a public interest need to curb unrestricted rate increases. To what extent are AT&T's discounted offerings available to "high-volume" residential subscribers where the advanced billing techniques upon which these offerings rely may not be readily available? Such a lack of availability could occur in rural areas served by independent telephone companies, and areas where "equal access" to interexchange carriers has not been implemented. What proportion of AT&T's residential customers are located in such areas are thus affected?

64. We seek comment on whether we should adopt one of the two following options that will afford varying measures of protection against basic schedule rate increases. First, we seek comment on creating a basic rate index to replace the residential index in Basket 1. The residential PCI was created as a subindex of the Basket 1 total PCI, and was calculated for revenue for all the services in Basket 1. It created a separate

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[138]*See* Peter K. Pitsch, *A Brief History of Competition in the Long Distance Communications Market*, at 15-22, attached to Letter from Charles L. Ward, Government Affairs Director, AT&T, to Chief Economist, Office of Plans & Policy, Federal Communications Commission, *submitted in* CC Docket 79-252 (Sept. 22, 1994); *see also* Letter from Charles L. Ward to Federal Communications Commission, (April 20, 1994), *supra* at note 110.

[139]*See* Letter from Charles L. Ward, AT&T, to Acting Secretary, Federal Communications Commission, submitted in CC Docket 79-252 (April 20, 1994).

cap on the amount that residential services in Basket 1 could increase each year.[140] The purpose of the residential PCI was to protect residential services against price increases which would offset price decreases for commercial service. The recent streamlining of commercial services, however, renders this function obsolete. Thus, we propose to delete the residential PCI from our rules.

65. In place of the residential index, we propose creating a basic rate index, similar in operation to the residential index, which would govern increases in basic domestic MTS service rates to a given percentage per year.[141] We tentatively conclude that this percentage should be set at 5 percent, that is, AT&T would not be able to increase basic rates by a margin of more than 5 percent per year in relation to the Basket 1 PCI. We select 5 percent because it is a reasonably restrained application of indexed increases in AT&T's basic toll rates in recent years,[142] and reflects as well the general limitation we have placed on the pricing flexibility in price caps service categories.[143] We seek comment on these conclusions and proposals.

66. As an alternative to adopting our above proposed basic rate index to protect basic MTS rates, we seek comment on adopting AT&T's "safety net" proposal. AT&T has proposed an option that is predicated on the market for Basket 1 services being segmented among discrete classes of customers.[144] AT&T requests that the Commission reclassify AT&T as a non-dominant carrier. In return, AT&T states that it will provide low-income and low-volume consumers with a "safety net" of low-usage service plans. This plan would consist of two services: one targeted for low-income users, the other available to all consumers but intended to benefit low-volume users. Prices would remain fixed until 1998. This option offers a measure of built-in protection for low-income and low-volume users. AT&T bases its proposal on its assertion that "[t]here is overwhelming

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[140]*See AT&T Price Cap Order*, 4 FCC Rcd at 3052-53.

[141]In calculating the basic rate index, we would require AT&T to utilize its non-discounted basic rates and exclude any discounts based on volume, term, "loyalty" (length of service), "win-back" (change from another carrier's service), or other factors, even if these discounts are offered on an automatic, non-"self-selecting" basis.

[142]*See* para. 36-37, *supra*, for a discussion of recent increases in AT&T's basic rates.

[143]*See* 47 C.F.R. § 61.47(e)(1).

[144]Letter of Alex Mandl, AT&T, to the Chairman, Federal Communications Commission, dated October 4, 1994.

evidence that the current state of competition in this market fully support[s] the reclassification of AT&T as non-dominant . . . ."[145]

67. We seek comment on this option generally and whether such an approach is feasible and desirable without reclassification of AT&T as a non-dominant carrier.[146] We also seek comment on the appropriate price levels for low-income and low-volume users, respectively. We further seek comment as to the period that such price levels should remain fixed and what approach would replace this mechanism after the expiration date.

D. Exogenous Costs Issues.

68. All carriers subject to price cap regulation file adjustments to the PCI at the annual price cap tariff filing and maintain updated PCIs to reflect the effect of midyear access and exogenous cost changes. Exogenous costs are costs that change due to changes in laws, regulations, or rules, or other administrative, legislative, or judicial changes beyond a carrier's control and not reflected elsewhere in the price cap formula.[147] Carriers calculate these adjustments using the price cap formulas set forth in our rules.[148] Exogenous costs are represented by the "z factor."[149] In addition, the price cap formula applied to AT&T includes a "y factor," which allocates AT&T's access costs among all capped services in AT&T's price cap baskets.[150] Changes in access costs are treated as exogenous costs for AT&T.

69. When it adopted the AT&T price cap plan in 1989, the Commission determined that exogenous costs should result in an adjustment to the PCI to ensure that the price cap formula does not lead to unreasonably high or low rates.[151] We recently

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[145]*Id.*

[146]We note, for example, that the *OCP Guidelines Order* permitted a dominant carrier to offer service with minimum monthly charges "as long as it also makes available unbundled basic MTS offerings." *OCP Guidelines Order*, 59 Rad. Reg. 2d (P&F) at 89.

[147]*Further Notice*, 3 FCC Rcd at 3383 n.738.

[148]*See* 47 C.F.R. §§ 61.44-61.45.

[149]*See id.* §§ 61.44(c), 61.45(d).

[150]*Id.* §§ 61.44(d)-(h).

[151]*AT&T Price Cap Order*, 4 FCC Rcd at 3002-03, 3017-18.

revised our rules for local exchange carriers (LECs) in the *LEC Price Cap Performance Review Report and Order*[152] to change the exogenous cost rules applicable to accounting changes. Exogenous treatment is now permitted only for those accounting changes that result in economic cost changes, *i.e.*, that affect the discounted cash flow of the LEC. We concluded that most accounting changes, generally, will have no direct impact on the cash flow choices available to LECs because financial accounting charges are designed primarily to give the financial markets a more accurate portrayal of the financial health of the corporation, and not necessarily to make the company behave differently.[153] We also concluded that adopting this economic cost standard will narrow the exception that exogenous cost treatment represents to the general principle that, under price caps, cost changes do not flow directly into rate changes.[154] We ordered the LECs to adjust their PCIs to exclude prospectively any accounting cost changes currently reflected there for which carriers did not incur an economic cost,[155] for example, the changes in accounting for costs of employee post-retirement benefits other than pensions (commonly know as "other post-retirement employee benefits" or "OPEBs") that are engendered by the Financial Accounting Standards Board's (FASB's) Statement of Financial Accounting Standards-106 (SFAS-106)[156] and Statement of Financial Accounting Standards-112 (SFAS-112).[157]

70. We tentatively conclude that we should adopt the same treatment for exogenous costs for AT&T as we adopted for LECs in the *LEC Price Cap Performance Review*

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[152]Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, FCC 95-132, (rel. April 7, 1995), *(LEC Price Cap Performance Review Report and Order)*, at paras. 292-320.

[153]*Id.* at para. 306.

[154]*Id.* at paras. 294-96.

[155]*Id.* at paras. 307-10.

[156]SFAS-106 requires companies to account for OPEBs on an accrual basis beginning December 15, 1992. SFAS-106 also requires companies to book the previously unaccrued OPEB amounts for retirees and active employees as of the date that the company adopts SFAS-106. *See id.* at para. 276.

[157]SFAS-112 requires companies to account for such post-employment benefits on an accrual basis beginning December 15, 1993. The Common Carrier Bureau required the LECs to adopt SFAS-112 for regulatory accounting purposes no later than January 1, 1994. Bell Atlantic has sought exogenous treatment of its SFAS-112 costs. *See id.* at para. 277.

Report and Order. We seek comment on this tentative conclusion. We also seek comment on whether differences between AT&T and the LECs justify the adoption of different rules governing the eligibility for exogenous treatment of costs resulting from changes in accounting procedures, and, if so, what these rules should be.

IV. COMMENTS: PROCEDURAL RULES

71. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Sections 1.1202, 1.1203, and 1.1206(a) of the Commission's Rules, 47 C.F.R. §§ 1.1202, 1.203, and 1.1206(a).

72. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments in this proceeding on or before July 3, 1995, and reply comments on or before July 24, 1995. All relevant and timely comments will be considered by this Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

73. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and 11 copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at its headquarters at 1919 M Street, N.W., Washington, D.C.

74. We have determined that Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605(b), does not apply to this rulemaking proceeding because if promulgated, it would not have a significant economic impact on a substantial number of small entities. Although we do not find that the Regulatory Flexibility Act is applicable to this proceeding, this Commission has an ongoing concern with the effect of its rules and regulation on small business and the customers of the regulated carriers. The Secretary shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business

Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96- 354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq* (1981).

V. ORDERING CLAUSE

75. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 201-205, 303(r), 403, NOTICE IS HEREBY GIVEN of proposed amendments to Part 61, and Sections 61.3, 61.43-.44, 61.46-.47, 61.49 and 61.58, in accordance with the proposals, discussions, and statement of issues in this Further Notice of Proposed rulemaking, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statement of issues.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

Proposed Amendments to the Code of Federal Regulations

PART 61 -- TARIFFS

1. The authority citation for Part 61 continues to read as follows:

AUTHORITY: Secs. 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

2. Section 61.3 is amended by redesignating paragraphs (c) through (mm) as paragraphs (d) through (nn), and adding new paragraph (c) to read as follows:

§ 61.3 Definitions.

* * * * *

§§ 61.3(c) through (ll) are redesignated as follows:

Old section	New section
61.3(c)	61.3(d)
61.3(d)	61.3(e)
61.3(e)	61.3(f)
61.3(f)	61.3(g)
61.3(g)	61.3(h)
61.3(h)	61.3(i)
61.3(i)	61.3(j)
61.3(j)	61.3(k)
61.3(k)	61.3(l)
61.3(l)	61.3(m)
61.3(m)	61.3(n)
61.3(n)	61.3(o)
61.3(o)	61.3(p)
61.3(p)	61.3(q)
61.3(q)	61.3(r)

61.3(r)	61.3(s)
61.3(s)	61.3(t)
61.3(t)	61.3(u)
61.3(u)	61.3(v)
61.3(v)	61.3(w)
61.3(w)	61.3(x)
61.3(x)	61.3(y)
61.3(y)	61.3(z)
61.3(z)	61.3(aa)
61.3(aa)	61.3(bb)
61.3(bb)	61.3(cc)
61.3(cc)	61.3(dd)
61.3(dd)	61.3(ee)
61.3(ee)	61.3(ff)
61.3(ff)	61.3(gg)
61.3(gg)	61.3(hh)
61.3(hh)	61.3(ii)
61.3(ii)	61.3(jj)
61.3(jj)	61.3(kk)
61.3(kk)	61.3(ll)
61.3(ll)	61.3(mm)
61.3(mm)	61.3(nn)

* * * * *

(c) Alternative Pricing Plan (APP). Any deviation from the basic schedule rates for domestic MTS offered on an optional basis by an interexchange carrier subject to price cap regulation pursuant to § 61.41(a)(1) to an eligible customer who enrolls for the service.

* * * * *

3. Section 61.42 is amended by revising paragraph (b)(1)(i) through (vi) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(b) * * *

(1) * * *

(i) Domestic MTS;
(ii) International MTS; and
(iii) Operator and credit card services.

* * * * *

4. Section 61.43 is amended by revising the section to read as follows:

§ 61.43 Annual price cap filings required.

Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to §§ 61.44 through 61.47, that incorporate the costs and rates of new services and APPs into the PCI, API, or SBI calculations pursuant to §§ 61.44(g), 61.45(g), 61.46(b) and (c), and 61.47(b) through (d). * * *

5. Section 61.44 is amended by revising paragraph (c) to read as follows:

§ 61.44 Adjustments to the PCI for Dominant Interexchange Carriers.

(c) The exogenous cost changes represented by the term "ΔZ" in the formula detailed in paragraph (b) of this section shall be limited to those cost changes that the Commission shall permit or require by rule, rule waiver, or declaratory ruling, and include those caused by :

* * * * *

(2) Such changes in the Uniform System of Accounts, including changes in the Uniform System of Accounts requirements made pursuant to § 32.16, as the Commission shall permit or require be treated as exogenous by rule, rule waiver, or declaratory ruling.

* * * * *

(5) Such tax law changes and other extraordinary cost changes as the Commission shall permit or require be treated as exogenous by rule, rule waiver, or declaratory ruling.

* * * * *

6. Section 61.46 is amended by redesignating paragraphs (c) through (f) as paragraphs (d) through (g), and adding new paragraph (c) to read as follows:

§ 61.46 Adjustments to the API.

* * * * *

§ 61.46 is redesignated as follows:

Old section	New section
(c)	(d)
(d)	(e)
(e)	(f)
(f)	(g)

* * * * *

(c) APPs, as defined in § 61.3(c), must be included in the appropriate API calculations under paragraph (a) of this section beginning at the date that the tariff revisions placing the APP under price cap regulation take effect, and quarterly thereafter until the annual price cap filing made pursuant to § 61.43 before which the APP has been effective for the full base year. This index adjustment requires that the demand for the APP during the initial 90-day period and each quarterly period during the period before the annual price cap filing made pursuant to § 61.43 before which the APP has been effective for the full base year must be included in determining the revenues used in calculating the API.

* * * * *

7. Section 61.47 is amended by redesignating paragraphs (d) through (h) as paragraphs (e) through (i), adding new paragraph (d), and revising paragraph (g) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

§ 61.47 is redesignated as follows:

Old section	New section
(d)	(e)
(e)	(f)
(f)	(g)
(g)	(h)
(h)	(i)

* * * * *

(d) APPs, as defined in § 61.3(c), must be included in the appropriate SBI calculations under paragraph (a) of this section beginning at the date that the tariff revisions placing the APP under price cap regulation take effect, and quarterly thereafter until the annual price cap filing made pursuant to § 61.43 before which the APP has been effective for the full base year. This index adjustment requires that the demand for the APP during the base period and each quarterly period during the period before the annual price cap filing made pursuant to § 61.43 before which the APP has been effective for the full base year must be included in determining the revenues used in calculating the SBI.

* * * * *

(g) * * *

(1) The pricing bands for the domestic MTS service category shall limit the annual upward pricing flexibility for that service category, as reflected in its SBI, to four percent, and the annual downward pricing flexibility to 15 percent, relative to the percentage change in the PCI for the residential services basket, measured from the last day of the preceding tariff year.

(2) Dominant interexchange carriers subject to price cap regulation shall calculate a composite basic rate for undiscounted domestic MTS service contained in the residential services basket. Notwithstanding paragraph (g)(1) of this section, the annual upward pricing flexibility for this composite rate shall be limited to five percent, relative to the

percentage change in the PCI for the residential services basket, measured from the last day of the preceding tariff year.

8. Section 61.49 is amended by revising paragraphs (c), (d), and (g)(1) and adding paragraph (g)(3) to reads as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(c) Each price cap tariff filing that proposes rates above the applicable band limits established in §§ 61.47(f), (g)(1), (h) and (i) or above the limit on the basic rate for undiscounted domestic MTS established in § 61.47(g)(2) must be accompanied by supporting materials establishing substantial cause for the proposed rates.

(d) Each price cap filing that proposes service category rates below applicable band limits established in § 61.47(f), (g)(1), (h) and (i) of this part must be accompanied by supporting material establishing that the rates cover the service category's average variable cost, or equivalently, that the service category's net additional revenue resulting from the price change exceeds additional costs.

* * * * *

(g) * * *

(1) A new service introduced by a dominant interexchange carrier's tariff filing is subject to price cap regulation when the projected demand for such new service includes more than *de minimis* usage by subscribers to the services described in § 61.42(b)(1), *i.e.*, when such projected usage constitutes more than five percent of overall projected demand within the net revenue test period set forth in this paragraph. * * *

(2) * * *

(3) Accompanying demand and revenue data is not required for tariffs introducing an APP, as defined in § 61.3(c), filed on an initial streamlined basis. Tariff revisions placing APPs under price cap regulation must be accompanied by actual demand and revenue data for the 90-day period that the initial APP filing was effective.

* * * *

9. Section 61.58 is amended by revising paragraph (c)(3) and adding new paragraph (c)(8) to read as follows:

§ 61.58 Notice requirements.

* * * * *

(c) * * *

(3) Tariff filings that will cause any API to exceed its applicable PCI pursuant to calculations provided for in § 61.46 of this part, that will cause any SBI to exceed its upper banding limitations established in §§ 61.47(f), (g)(1), (h), and (i) of this part, or that will cause the basic schedule domestic MTS rate to exceed its limitation on upward pricing flexibility established in § 61.47(g)(2) of this part, must be made on at least 120 days' notice, or such other maximum period of notice permitted by section 203(b) of the Communications Act, regardless of whether petitions under § 1.773 of the Commission's Rules have been filed.

* * * * *

(8) Tariff filings for APPs, as defined in § 61.3(c), that are initially filed on a streamlined basis must be made on at least 14 days' notice. Tariff filings to extend the initial 90-day effective period of an APP that was filed on a streamlined basis for an additional maximum of 30 days must be filed on at least one day's notice, *i.e.*, no later than the 89th day, or the last business day, whichever is earlier, of the initial 90-day effective period. Tariff filings that remove the expiration date of an APP initially filed on a streamlined basis and place the APP under price cap regulation must be filed on at least fourteen days' notice, to become effective no later than 120 days from the date the APP initially was filed on a streamlined basis.

* * * * *